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CURRENT TOPICS

Cost of a Re-trial: Some Inequalities

IN these days, when almost all of us have to press our financial claims, there is a moral to be drawn from figures quoted in the London *Evening Standard* last week referring to the re-trial ordered by CASSELS, J., in *R.* v. *Straffen*. Trying to estimate the waste of public money involved in the juror's lapse, the columnist states that prosecuting leader and junior could hope for £100 and £50 respectively in the shape of additional "refreshers," whereas defence counsel, who appeared on a "poor person's certificate," were entitled to no refreshers at all, being paid at a "nominal flat rate." They could, however, hope to be paid £10 to £15 for the new trial. The 1952 Annual Report of The Law Society comments upon this situation: "In almost all defended cases at assizes and quarter sessions counsel for the defence receives much less than half of the fees considered to be fair for, and in fact paid to, counsel for the prosecution. In really long cases, counsel for the defence may well receive only an absurdly low fraction of the fees paid to junior counsel for the prosecution." That these absurd injustices affect the respective solicitors goes without saying. In one case referred to in the annual report prosecuting counsel and solicitor received £45 and £30, defending counsel and solicitor received £11 and £9 respectively. It is well known that the task of the defence is usually much more arduous than that of the prosecution—which has all the resources of the public service at its disposal.

Section 9 of the Housing Act, 1936

THE victory of Mr. A. RAWLENCE in his recent appeal to the Croydon County Court against a notice to execute works under s. 9 of the Housing Act, 1936 (see *ante*, pp. 335 and 372), has proved short-lived. On 25th July (*The Times*, 26th July), the Court of Appeal allowed the Croydon Corporation's appeal against the learned county court judge's decision that Mr. Rawlence was not the person having control of the house under s. 9 (1), and that he was not the person who received the rack-rent, or who would receive it if the house was let at a rack-rent, under s. 9 (4). The Rent Restriction Acts, said SOMERVELL, L.J., could not be disregarded in ascertaining the value of the house to the landlord; the most that he could recover was the standard rent plus any permitted increases. As between the landlord and the corporation, the landlord was in receipt of all the rent which was allowed by law and was therefore in receipt of the rack-rent; and he was therefore the proper person on whom the notice should be served.

A Jubilee: The National Conditions of Sale

THE idea of the National Conditions of Sale originated, about the beginning of the century, in the mind of one Alfred Kendall, a solicitor's managing clerk in the City of Norwich. He conceived a set of conditions which would hold a fair balance between vendor and purchaser and would be available for use on a nation-wide scale. The drafting was entrusted to Mr. E. P. Wolstenholme, and in June, 1902,

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arrangements were completed for their publication by The Solicitors' Law Stationery Society, Ltd. The precise date of issue of the first edition is uncertain, but it must have been, as nearly as may be, fifty years ago. The National Conditions went through six editions under the pre-1926 law. The seventh edition was issued in December, 1925, in anticipation of the coming into force of the 1925 Acts, and there have been eight further editions since then. Among the draftsmen by whom the various editions were settled are to be found such illustrious names as those of Mr. Cyprian Williams and Sir Benjamin Cherry (who was responsible for the crucial seventh edition), and more recently the late Mr. R. M. C. Munro. Mr. Kendall's idea has been well justified by their success in practice over the fifty years. As an indication of the place which sets of conditions prepared for general use have come to occupy, one may observe a tendency to regard the National Conditions as if they were in themselves a complete embodiment of the law. They are in fact but a set of terms to be read, construed and put into effect upon the underlying basis of the general law of vendor and purchaser (see, for example, *Smith* v. *Hamilton* [1951] Ch. 174). An illustration is to be found in the questions sometimes raised as to the preparation of completion statements in the light of what are now clauses 4 and 5 of the 15th edition of the National Conditions. In that connection there are two general rules or principles which ought to be kept in mind: first, that (in the absence, of course, of clear express provision) a vendor does not at the same time get interest on the unpaid purchase money and the rents and profits of the property itself (*Re Priestley's Contract* [1937] Ch., at pp. 479–480, quoting *Birch* v. *Joy* (1852), 3 H.L. Cas. 565); and, secondly, that a vendor remaining in beneficial occupation of the property must bring into account a fair rent for his occupation (*Metropolitan Railway Co.* v. *Defries* (1877), 2 Q.B.D. 387). Properly regarded and used, standard sets of conditions such as the National Conditions are an influential formative factor in establishing that "practice of conveyancers" which is said to form part of the law, and it may truly be said that the faith of Mr. Kendall and the publishers in that idea born fifty years ago in Norwich has been abundantly vindicated.

Central Land Board Report

THE report of the Central Land Board for the financial year ended 31st March, 1952 (published on 24th July, H.M. Stationery Office, 6d.), states that by the end of the year the Valuation Office had issued 758,395 statements of proposed development value in respect of claims on the £300 m. under the Town and Country Planning Act, 1947. This was 93 per cent. of the total to be issued. The Board had issued or prepared 640,816 determinations of development value. Of these, 290,816 were *nil*, 9,430 were *de minimis*, and the remaining 340,570 represented aggregate development values of £204,707,177. These figures included, for Scotland, 61,303 *nil* claims, 4,136 *de minimis*, and 12,180 representing £5,211,765 in development values. During the year there were 776 notices of appeal against the Board's determinations, making a total of 1,064. Of these, 817 were disposed of after further negotiation, and 20 were heard by the Lands Tribunal. In Scotland there were 81 applications for the appointment of an arbiter. Forty-six were disposed of after further negotiation, and four appeals were heard. A total of £799,980 was paid in respect of 2,879 claims under s. 59 in respect of certain properties the subject of a value payment under the War Damage Act, 1943, and £3,177 under s. 56 of the Scottish Act. The Board paid £1,847,690 to claimants who had incurred professional fees in connection with their claims. Development charges received in cash amounted to £3,875,522, of which £2,319,428 was for housing development. A further £1,529,462 was set off against claims by builders and owners of single house plots. In Scotland £214,058 was received, and £30,964 set off against claims.

Cost of Land for Development

ON development by local authorities the Central Land Board report that those who have bought land for development since 1948 are rarely paying more, and in many cases are paying considerably less, in purchase price and development charge than if the Town and Country Planning Act had not been passed. The Board say there is a good deal of land still available in various parts of the country which is unaffected by development charge. When development charge is payable, the buyer of land comes to terms on the basis that in present circumstances he is normally anxious to build and the seller wants as much as he can get. Many have disregarded the Board's advice not to pay building value for land if they will have to pay development charge in addition, presumably because they were prepared to pay an excessive price for a particular piece of land which they wanted urgently. Most sales have taken place somewhere between existing use value and building value, or at building value. When it is at building value there is usually, though not always, an assignment to the buyer of the seller's claim on the £300 m. giving the buyer an asset to set off against his development charge. The Board say it is clear that the estimated total of all claims is a good deal smaller than was expected by claimants. The Board refer to the procedure by which local housing authorities can buy land and resell it to private developers, either at existing use value or inclusive of development charge. They add: "It seems that this procedure goes a long way to meet the needs of those who have been given, or promised, licences to build." Some sixty authorities in England and Wales have adopted this procedure, and at least fifty others propose to do so. Ten compulsory purchase orders were made, bringing the total to thirty-five.

Professional Opinions on Marriage

IT is sometimes said that there is a general trend of professional opinion on a given topic. This is more likely to occur in connection with purely professional matters than in connection with those of general interest. At the sitting of the Royal Commission on Marriage and Divorce on 22nd July, the vice-chairman of the General Council of the Bar, Mr. H. A. H. CHRISTIE, Q.C., explained that the Council's written evidence had been prepared by a special committee composed mainly of practitioners at the Probate and Divorce Bar, and that it was later approved by the majority, but not all, of the members of the Council. The Bar as a whole was not consulted during the preparation of the memoranda, and it could not be and was not claimed that the memoranda represented the views of members of the Bar as a whole. Some of the answers to questions put by members of the Royal Commission were, he said, personal views. The explanation seems superfluous. The views of representative councils are often not unanimous, nor can it be expected that they will often be backed by a unanimous body of general opinion. This is especially so in a subject such as marriage, which is neither primarily nor exclusively a matter for experts. It is to be suspected that even those who spend the greater part of their working hours in reading briefs, drawing petitions and examining witnesses in divorce cases, rely mainly nevertheless on their personal experiences for their opinions on the marriage laws.

A Conveyancer's Diary

LEGITIMATION: STATUTE AND COMMON LAW CONTRASTED

THE point which was actually decided in *Re Hurll* [1952] 2 T.L.R. 85; p. 462, *ante*) turned entirely on the provisions of the Legitimacy Act, 1926, and especially on those of s. 8 (1) of the Act; but the decision is not easily intelligible without reference to the law as it stood before this Act came into force on the 1st January, 1927. And reference to the pre-1927 law gives me the opportunity—and, I hope, will give my readers the pleasure—of looking again through certain passages of the judgment of James, L.J., in *Re Goodman's Trusts* (1881), 17 Ch. D. 266, where that law is stated in incomparable fashion.

In that case the question was whether the child, who was born in Holland of parents both then and at the time of their subsequent marriage domiciled in Holland, and who was thus legitimated by the marriage of her parents, according to the laws of Holland, was or was not the legitimate child of her father for the purpose of succeeding to personalty on the intestacy in England of her father's sister. Sir George Jessel, M.R., held that she was not; the Court of Appeal reversed this decision and held (by a majority) that she was. James, L.J., agreed with the majority view, and excerpts from his judgment will show the then existing state of the law.

After stating the general problem and his view on it, he said (at p. 296): "There is, of course, no doubt as to what the English law as to an English child is. We have in this country from all time refused to recognise legitimation of issue by the subsequent marriage of the parents, and possibly our peculiarity in this respect may deserve all that was said in its favour by Professor, afterwards Mr. Justice, Blackstone, the somewhat indiscriminate eulogist of every peculiarity and anomaly in our system of laws. But the question is, what is the rule which the English law adopts and applies to a non-English child? This is a question of international comity and international law. According to that law as recognised, and that comity as practised, in all other civilised communities, the status of a person, his legitimacy or illegitimacy, is to be determined everywhere by the law of the country of his origin—the law under which he was born." The learned lord justice then went on to say that the authorities, equally with principle, supported this view, and referred particularly to *Doe d. Birtwhistle* v. *Vardill* (1835), 2 Cl. & F. 571; (1840), 7 Cl. & F. 895. In that case the question was whether a child born in Scotland, of parents who were domiciled and subsequently intermarried in Scotland, could succeed as heir-at-law to land in England on the intestacy of a relation. Of this case, and what it decided, James, L.J., said (at pp. 298–9): "In that judgment [of the judges summoned to assist the House of Lords], or advice, there are two distinct propositions clearly and distinctly enunciated. The first was that the claimant was for all purposes and to all intents legitimate. The second was that such legitimacy did not necessarily, and did not in fact in that case, include heirship to English land. The first proposition was accepted by the law lords without any doubt or question; the second was questioned. After further reference to the judges and further hearing, the case was at last determined in accordance with the second proposition. But the first proposition has never been really questioned . . . What the assembled judges said in *Doe* v. *Vardill*, and what the lords held, was, that the case of heirship to English land was a peculiar exception to the rights incident to that character and status of legitimacy, which was admitted by both judges and lords to be the true character and status of the claimant. It was only an additional instance of the many anomalies which at that time affected the descent of land. Legitimate relationship in the first degree was of no avail if the claimant were an alien, or if he were of the half-blood, or in the direct ascending line, which, *pace* Professor Blackstone, were precious absurdities in the law of real property. But in this particular case, the exception is, at all events, plausible. The English heirship, the descent of English land, required not only that the man should be legitimate but, as it were, *porphyro-genitus*, born legitimate within the narrowest pale of English legitimacy. Heirship is an incident of land, depending on local law, the law of the country, the county, the manor, and even of the particular property itself, the *forma doni*. Kinship is an incident of the person, and universal . . ."

Before 1927, therefore, while the English law did not recognise legitimation of issue by the subsequent marriage of the parents if the parents were domiciled in England at the time of their marriage, it did recognise the legitimate status of a child who was legitimated by the law of the country in which its parents were domiciled at the date both of its birth and of their marriage, for all purposes except that of succession as heir-at-law to English land. So far as succession to property was concerned, with this one exception the legitimated person was in the same position as the person born legitimate: thus, such a person could succeed to personal property on an intestacy (*Re Goodman's Trusts*, *supra*), and could take under either a bequest, or a devise, in favour of "children" (*Re Grey's Trusts* [1892] 3 Ch. 88). And so far as the single exception laid down, or recognised, in *Doe* v. *Vardill* was concerned—an exception with most interesting historical antecedents, stretching back to the Statute of Merton, which can be studied at length by anyone with a taste for research into our mediæval land law in the advice given by Tindal, C.J., on behalf of the judges (as reported in 7 Cl. & F. 895, at p. 924)—this is now of little practical importance; for quite apart from the Legitimacy Act, 1926, the abolition of heirship by the Administration of Estates Act, 1925, must reduce the cases in which this exception can operate to pre-1926 intestacies.

That was the state of the law when the Legitimacy Act, 1926, came into force. The main purpose of that Act, which was effected by s. 1, was to accord the status of legitimacy to the issue, born before marriage, of persons subsequently marrying where the father of such issue is at the date of the marriage domiciled in England or Wales, the date of legitimation for this purpose being the date of the marriage or the date on which the Act came into force, whichever is the later. For the purpose of succession to property, however, the rights of persons legitimated by the Act are more limited than those of persons born legitimate, since the former can only, in effect, succeed on an intestacy, or take under a disposition of property, which occurs or comes into operation after the date of legitimation, i.e., the date of the marriage, or, if that took place before the date when the Act came into force, the latter date (s. 3).

Besides dealing with the case of a person whose father was domiciled in England or Wales at the date of the marriage, the Act also relaxed the old common-law rule that in the case of a birth and marriage abroad, the issue of a marriage could only be legitimated in accordance with the appropriate foreign law if the father was domiciled both at the date of the marriage and at the date of the birth in a country which recognised

legitimation *per subsequens matrimonium*. This relaxation is contained in s. 8 (1) of the Act, which provides that where the parents of an illegitimate person marry or have married one another and the father was or is, at the time of the marriage, domiciled in a country, other than England or Wales, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in England and Wales be recognised as having been legitimated from the date of the marriage (or the commencement of the Act, if that is later), notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation *per subsequens matrimonium* was permitted by law. It is this provision which has now been construed in *Re Hurll, supra*, and particularly the last words thereof, those introduced by the word "notwithstanding." It was suggested that these words applied not only to persons legitimated by the Act, but to persons who would have been legitimate quite apart from the Act, i.e., in accordance with the principles referred to by James, L.J., in *Re Goodman's Trusts, supra*. But Harman, J., took into account what he regarded as the general purpose of the Act, the legitimation of persons who were not previously legitimated, and held that these words cut down the category of persons to whom s. 8 (1) applies to those who, because the father did not fulfil the common-law condition of being domiciled at the date of the birth in a country which permitted legitimation *per subsequens matrimonium*, could not in English law be recognised as having been legitimated apart from the Act.

"A B C"

Landlord and Tenant Notebook

FARM COTTAGES

PARLIAMENTARY debate on the present Housing Bill included some discussion of the merits and demerits of the "tied cottage system," the immediate occasion being a proposal that any occupier of such should be entitled to not less than four weeks' notice to quit. We are, of course, not concerned with politics, and in any event "tied cottage" is not a term of art. The discussion does, however, suggest a review of some of the authorities and statutes which affect cottages occupied by farm workers who are employed by their landlords.

A question which not infrequently arises in practice is whether such an occupier is a licensee or a tenant, especially when deductions are made from wages in respect of the occupation of the cottage. It would, perhaps, be putting it too high to suggest that there is a presumption in favour of the licensor-licensee relationship, but a passage from the judgment of a provincial county court judge, reported in the *Estates Gazette* a few years ago ([1946] E.G.D. 196) is illuminating. "From experience gained in my country courts," the learned judge said, "I find that there is a widespread misunderstanding on the subject, and I propose, therefore, to explain as clearly as I can why I am of the opinion that, in circumstances such as exist in this case [in which the defendant alleged that the statutory deductions constituted rent under a tenancy], no contract of tenancy is created, and no relation of landlord and tenant, but only a relation of master and servant exists. To avoid misunderstanding, let me say that there is nothing to prevent a farmer and his man entering into a contract of tenancy and creating a demise of the cottage occupied by a farm worker. If this is done, and the cottage is not let with the use of furniture, then a tenancy protected under the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, is created. But there is nothing in this case to show that this was done, and the same is true of numerous similar cases which have come before me in recent months, apart from the deduction of the sum authorised by the orders of the County Wages Committee in respect of the occupation of the farmer's cottage." And the judgment went on to examine the effect of those deductions, the learned judge deciding, in the light of *Baker* v. *Wood* (1919), 36 T.L.R. 281 (C.A.), that they did not constitute rent.

Such problems, have, indeed, had to be solved long before there were any minimum wages or maximum rents. The question whether an occupier was a tenant or a licensee might affect the right of a parish to "remove" him under the Poor Law if he became a pauper.

Among the authorities much relied on in such disputes is *Bertie* v. *Beaumont* (1812), 16 East 33, though the case itself had, it so happens, nothing to do with poor law but concerned a claim to a right of way. The plaintiff had described himself as possessed of and occupying a certain cottage, but when a witness said he lived in part of it (the rest was let), he being a weekly servant of the plaintiff, but that he "had less wages by £5 a year, on account of his paying no rent in money" (adding that a previous occupier had paid £5 a year for it), the Lord Chief Baron nonsuited the plaintiff. In the Court of King's Bench, however, he succeeded in getting this set aside. Ellenborough, C.J.'s judgment was fairly short on this occasion (as far as the report goes), virtually amounting to a disagreement with the court of first instance as to the proper inference. "The plaintiff put him in possession as his hired servant, and, as any person so circumstanced might be expected to do, he allowed the man less wages on account of the inconvenience to him of the occupation"; and the occupation of the servant was, of course, occupation of the master. One might, of course, ask why master and servant should trouble to analyse remuneration. In *R.* v. *Cheshunt* (*Inhabitants*) (1818), 1 B. & Ald. 473, in which the defendants sought to resist the removal of a pauper to their parish on the ground that he had acquired a settlement elsewhere by virtue of a tenancy, Ellenborough, C.J., was rather more explicit. The alleged tenancy was that of a cottage which the pauper had occupied at Waltham, where he had been employed by its owners, the Board of Ordnance, as a worker in their gunpowder factory. A weekly deduction of 2s. had been made from his pay, in respect of his occupation of that cottage. The decision (on appeal from quarter sessions) was again that there had been no tenancy; but when it comes to examining the reasoning, the judgment of Lord Ellenborough, at all events, is open to further criticism. The learned chief justice drew a picture of a coachman occupying rooms over his master's stables; and another of a gentleman having some twenty to thirty cottages in which labourers employed by him resided; and observed that if such were tenants recourse would have to be had to ejectment proceedings whenever possession was required by the owner, which would "plainly be productive of serious inconvenience." Apart from the consideration that inconvenience might not be a relevant factor, the judgment appears to take too gloomy a view of the effect of the Statute of Forcible Entry, 1381, or at all events a view different from those expressed later in *Hemmings* v. *Stoke Poges Golf Club* [1920] 1 K.B. 720 (C.A.) (it is fair to say that, in between, a number of decisions bore Lord Ellenborough out). But

again one might ask, what was the point of the reference to the 2s., there being no occasion to value benefit constituting reward?

Doe d. Hughes and Corbett v. *Derry* (1840), 9 Car. & P. 494, and *Mayhew* v. *Suttle* (1854), 4 El. & Bl. 347, were also cases in which the *Bertie* v. *Beaumont* principle and reasoning played their part; in the one, a farm manager was held to be a mere licensee of a dwelling-house, but then the agreement specifically said that he might reside in and have the use of that house rent-free; in the other, the occupier of premises owned by brewers, on which he was to sell their beer, was held to have the same status and to have no remedy in trespass when they ejected him without giving him the month's notice to determine the agreement which that agreement itself called for. It is, perhaps, noticeable that by now the courts are beginning to consider the question whether the premises are occupied "for the better performance of" the duties imposed by the contract of employment as some evidence whether the premises concerned are demised or not.

I said deliberately, when referring to the county court judgment cited in my second paragraph, that the learned judge decided the point "in the light of" *Baker* v. *Wood* (1919), 36 T.L.R. 281 (C.A.); and, indeed, an examination of that authority suggests that though it went far towards supporting the decision it may not have gone the whole way. Minimum wage legislation in matters agricultural began in 1917, with the Corn Production Act of that year; later, in 1924, agricultural wages were given a statute to themselves, and the measure now in force is the Agricultural Wages Act, 1948. In every enactment, provision was and is to be found for valuing prescribed "advantages and benefits . . . which may be reckoned as payment of wages in lieu of payment in cash," the task of valuation being delegated to boards and committees. Now *Baker* v. *Wood* was an action for alleged arrears of wages brought by a farm worker who had worked for the defendant since 1902; originally his wages were 14s. a week and no cottage, but in 1904 he was provided with a cottage and 1s. a week was deducted from his remuneration. There were (voluntary) increases before the Corn Production Act was passed. Under that Act an order was made making "3s. per week, less any rent or rates which may be paid by the occupier and so that the said value shall in no case exceed 3s. per week" the lawful value of a cottage for the above-mentioned purposes; and, as soon as that happened, the defendant deducted 3s. The plaintiff sued for the 2s. differences over a period of seventy-four weeks, and the point was not taken that, as far as the Corn Production Act was concerned, most of his claim was out of time (limitation: three months), for argument centred on the question whether there had been an increase of rent contrary to the then Increase of Rent, etc., Act, 1915. Nor, for that matter, was the question whether the 1s. rent was less than two-thirds of the rateable value mooted. The Court of Appeal decided to assume that there was a standard rent of 1s., but held that the short answer to the claim was that *if* there was inconsistency between the two statutes, that of 1917, being the later one, prevailed. But there was really no decision on the point whether the plaintiff was tenant or licensee, for, as Atkin, L.J., who saw no inconsistency in the legislation, said, the real answer was that the defendant had paid the prescribed wages and had not increased rent.

R. B.

HERE AND THERE

DINNER BITES DINER

IT has long been a journalistic commonplace, a nutshell maxim in the Fleet Street novitiates that, while "Dog Bites Man" is not new, "Man Bites Dog" is news. At that point the editorial sense of novelty and wonder appears to have suffered a blackout or sunk into a coma, for "Man Bites Rabbit," "Man Bites Sheep," "Man Bites Old Argentine Cow," even "Man Bites Whale," would not be accorded a fraction of an inch of news space by the least expert editor. Yet these episodes in the struggle for survival are none the less dramatic for being constantly re-enacted, unless in our perverse human way we insist on being all agog at a single murder but blasé at a massacre. Even from the most obvious and elementary point of view there is food for reflection in the not altogether unremarkable circumstance that the tenderness of courtship or the eloquence of patriotism and political wisdom should so often be linked with occasions when the lovers or the patriots have spent an hour or more stuffing little bits of sheep or pig into the holes in their heads. But if, even now, when food is rather more of a curiosity than it used to be, "Diner Bites Dinner" is not felt at the sub-editor's table to be superlatively newsworthy, "Dinner Bites Diner" stands in an altogether different class, and a few days ago when it turned up as a cause of action in a Paris court it was felt to be too good to miss. It came about in this way. There are restaurants in France where you may select your trout yet swimming in the tank or your lobster not yet put to the blush by any culinary contact or disguise. In such an establishment a customer complained that the crustacean paraded by pre-view for his approval was not fresh. Whereupon, according to his evidence, the restaurant proprietor waved it under his nose shouting, "Not fresh? Smell it!" This invitation he accepted but, so the restaurateur contended, went beyond its terms, peering at it in a manner calculated to cause it annoyance or irritation, so that the sequel was the natural and probable consequence of his own act. That sequel was that the denizen of the deep, with well-judged precision, reached out a claw and seized the tip of the customer's nose, nor would it let go until it had drawn blood or (as one report suggests) actually removed the extremity of the (to it) intrusive organ, thereby causing the plaintiff pain and suffering and necessitating an operation by a distinguished plastic surgeon (or, as the French so delicately phrase it, "æsthetic surgeon"). The court found against the restaurateur and ordered him to pay the franc equivalent of £100 damages and a £3 fine.

BENEFIT OF PROVOCATION

Now, in the absence of a full law report of the facts, arguments and judgment, one can only speculate on the grounds of the decision. It is certainly worthy of the attention of the learned gentlemen at present inquiring into our own law relating to animals. The first question that occurs to one is whether the lobster was held to be a wild animal or whether, removed from the influences and environment of its native element, it can be treated as domestic. It would make an unusual pet, true, but then a camel has been held to be a domestic and not a wild animal in England (*McQuaker* v. *Goddard* [1940] 1 K.B. 687), and yet it is not every day that one encounters a camel in Chancery Lane or Lincoln's Inn Fields. A lobster is less aggressive than a dog and less agile than a cat, and in France at least there is distinguished authority for holding that in some respects it has more sympathetic qualities than either. Did not Gérard de Nerval lead a live lobster on a string through the arcades of the Palais Royal, explaining that it was silent and knew the secrets of the sea? If, then, the lobster here in question was domestic its owner could plead the benefit of the doctrine of the "first bite" and put the plaintiff to proof of *scienter*. Now, on the facts there would appear to have been some

considerable difficulty in establishing this, for a lobster which is lying so quiet as to present the appearance of death is unlikely to be of a known ferocious disposition, and in tendering it for the inspection of the customer the owner cannot reasonably have anticipated that it would get, or prove itself, fresh, so very literally "with a vengeance." But in the present case the owner would appear to have rested his defence mainly on the doctrine of provocation as set forth recently in the Court of Justiciary in Scotland (*MacDonald* v. *Munro* [1951] S.C. (J.) 8). That, you remember, was the case of the dog of hitherto unimpeachable character who bit a small child under the provocation of a supposed interference with a bone to which he was devoting a properly concentrated attention, and the Lord Justice-General, holding that the dog's action "may have been in the dog's eyes seriously provoked," exonerated him from blame. The dog's-eye view in that case leads naturally to the lobster's-eye view in this. After all, how monstrous does the human face and form look to the fishy eye! Leigh Hunt vividly evoked the horrid, startling vision in his fish's address to the man:—

"Amazing monster! that for aught I know
With the first sight of thee didst make our race
For ever stare! O flat and shocking face,
Grimly divided from the breast below!

Thou that on dry land horribly dost go
With a split body and ridiculous pace
Prong after prong, disgracer of all grace,
Long-useless-finned, haired, upright, unwet, slow!"

And will the crustacean find the spectacle less appalling at close quarters—the peering eyes, the half-revealed teeth, the hairy lip and chin, the probing, protruding proboscis? "*Cet animal est méchant*," said the French naturalist of another creature. "*Quand on l'attaque il se défend.*" And, in the absence of a full statement of the facts, I for one cannot blame the lobster if, in a fine gesture of "*moriturus te saluto*," it replied to the advancing spearhead with a pincer movement. But, of course, the lawyer with an open mind must await the authoritative report.

RICHARD ROE.

BOOKS RECEIVED

Kerr on the Law and Practice as to Receivers. Twelfth Edition. By RAYMOND WALTON, M.A., B.C.L., of Lincoln's Inn, Barrister-at-Law, and A. WILFRED SARSON, Chartered Accountant. 1952. pp. lxiv and (with Index) 486. London: Sweet & Maxwell, Ltd. £2 15s. net.

The Principles of Agency. By HAROLD GREVILLE HANBURY, D.C.L., Vinerian Professor of English Law in the University of Oxford. 1952. pp. xviii and (with Index) 237. London: Stevens & Sons, Ltd. 25s. net.

Pollock on the Law of Partnership. Fifteenth Edition. By L. C. B. GOWER, LL.M., Solicitor, Sir Ernest Cassel Professor of Commercial Law in the University of London. 1952. pp. xxxv and (with Index) 272. London: Stevens & Sons, Ltd. 25s. net.

Leading Cases in Constitutional Law. By O. HOOD PHILLIPS, M.A., B.C.L. (Oxon.), of Gray's Inn, Barrister-at-Law, Dean of the Faculty of Law in the University of Birmingham. 1952. pp. xxi and 469. London: Sweet & Maxwell, Ltd. 35s. net.

The Constitutional Law of Great Britain and the Commonwealth. By O. HOOD PHILLIPS, M.A., B.C.L. (Oxon.), of Gray's Inn, Barrister-at-Law, Dean of the Faculty of Law in the University of Birmingham, assisted by G. ELLENBOGEN, M.A., of Gray's Inn and the Northern Circuit, Barrister-at-Law. 1952. pp. xliv and (with Index) 826. London: Sweet & Maxwell, Ltd. £2 2s. net.

The Elements of Roman Law. Third Edition. By R. W. LEE, D.C.L., F.B.A., Reader in Roman Law of the Inns of Court. 1952. pp. xxiv and (with Index) 489. London: Sweet and Maxwell, Ltd. 30s. net.

Carver's Carriage of Goods by Sea. Ninth Edition. By RAOUL P. COLINVAUX, of Gray's Inn, Barrister-at-Law. 1952. pp. cviii and (with Index) 1,182. London: Stevens & Sons, Ltd. £6 10s. net.

The British Cabinet System. By ARTHUR BERRIEDALE KEITH, D.C.L., LL.D., D. Litt., F.B.A. Second Edition. By N. H. GIBBS, Fellow and Tutor of Merton College, Oxford, and University Lecturer in Modern History. 1952. pp. x and (with Index) 466. London: Stevens & Sons, Ltd. 37s. 6d. net.

Bell's Sale of Food and Drugs. Supplement to the Twelfth Edition. By J. E. S. RICARDO, B.A. (Cantab.), of the Inner Temple and the Western Circuit, Barrister-at-Law. 1952. pp. xxiv and 115. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Stroud's Judicial Dictionary. Third Edition. Volume 2, E–L. General Editor: JOHN BURKE, Barrister-at-Law; Assistant General Editor: PETER ALLSOP, M.A., Barrister-at-Law. 1952. pp. xviii and 911 to 1,696. London: Sweet & Maxwell, Ltd. £3 15s. net.

The "Veronica" Trial. Notable British Trials Series, Volume 76. Edited by Professor G. W. KEETON, M.A., LL.D., Dean of the Faculty of Laws, University College, London, Barrister-at-Law, and JOHN CAMERON, D.S.C., LL.D., Q.C., Dean of the Faculty of Advocates. 1952. pp. (with appendices) 248. London: Edinburgh: Glasgow: William Hodge & Co., Ltd. 15s. net.

Oyez Practice Notes, No. 30: Summary Maintenance and Guardianship Orders. By A MAGISTRATES' CLERK. 1952. pp. (with Index) 71. London: The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

The County Court Practice, 1952. By His Honour Judge EDGAR DALE, a member of the Standing Committee for framing Rules, Mr. Registrar BRUCE HUMFREY, D.L., J.P., of the Croydon County Court Group, and R. C. L. GREGORY, LL.B., of Gray's Inn, Barrister-at-Law, and of the Lord Chancellor's Department. 1952. pp. ccxxvii, 1,806 and (Index) 158. London: Butterworth & Co. (Publishers), Ltd., Sweet & Maxwell, Ltd., and Stevens & Sons, Ltd. £3 15s. net.

REVIEWS

The Law Relating to the Architect. By E. J. RIMMER, B.Sc., M.Eng., A.M.I.C.E., of Lincoln's Inn, Barrister-at-Law; with a chapter on the Registration and Professional Conduct of the Architect, by PEMBROKE WICKS, C.B.E., LL.B., of the Middle Temple, Barrister-at-Law, Registrar of the Architects' Registration Council. 1952. pp. xv and (with Index) 244. London: Stevens & Sons, Ltd. 35s. net.

In using a law library one frequently comes across books on specialised subjects—boundaries and fences; courts martial; auctioneers and estate agents, and so on—which are full of useful law not to be found elsewhere, but which were published from twenty to fifty years ago and have never achieved a second edition. One such was the book of A. H. M. Brice, devoted exclusively to the law as it affected architects. This was published in 1925 and a period of some twenty-seven years has elapsed between that event and the publication of the work under review. In that period the architectural profession has ceased to be an open field for any who chose to work in it. It has become "registered" and now has the full panoply of a learned profession, complete with examinations, codes of professional conduct, scales of fees, and the inevitable disciplinary committee. All these matters are fully dealt with in Mr. Rimmer's book in a special

chapter contributed by Mr. Pembroke Wicks, C.B.E., LL.B., of the Middle Temple, Barrister-at-Law, Registrar of the Architects' Registration Council.

The main body of the book consists of chapters dealing with the status and authority of the architect, method and duration of appointment, and his legal responsibility in the matter of design, construction and survey. There are also chapters on remuneration, ownership and copyright in drawings, etc., and on the position of the architect as arbitrator. The appendices are numerous and include the full text of the Architects (Registration) Acts, 1931 and 1938, Disciplinary Regulations, Code of Professional Conduct, R.I.B.A. Scales of Fees, and a full statement of the procedure and forms to be employed in arbitration proceedings.

Inasmuch as the book is the only up-to-date work on the modern position of the architect, it is without doubt a very useful contribution to the law library. It does not, however, make any real claim (unless such claim is to be implied from the title) to contain "*all* the law relating to architects." For example, it does not cite one of the dozen or so cases referred to in an article entitled "Compelling an Architect to Certify," printed in 94 SOL. J., at p. 572. At present Mr. Rimmer's work is an "authoritative" guide, as the jacket states, *for the architect* as to his legal position; it is not a definitive work on this branch of the law. It is to be hoped that perhaps in a future edition the author will be able to expand his very useful book to make it even more authoritative.

The Law List, 1952. Edited by LESLIE C. E. TURNER. 1952. London: Stevens & Sons, Ltd. 25s. net.

The improvements and rearrangements introduced into the Law List in 1950 and 1951 having proved satisfactory and sufficient, no major change is made this year. It remains a work of reference most complete, accurate and useful.

Kime's International Law Directory for 1952. Edited and compiled by PHILIP W. T. KIME. 1952. London: Butterworth & Co. (Publishers), Ltd.; Kime's International Law Directory, Ltd. 15s. net.

The fact that this is the sixtieth year of publication of Kime's is the best possible testimony to its value. The list of legal practitioners covers principal cities and towns throughout the world and the general legal information given in the appendix includes full notes on the enforcement of foreign judgments, powers of attorney, the formation of companies and British and international patent law, among other matters. The volume is very well arranged and reference to whatever information is wanted could not be easier.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

EVIDENCE: ADMISSIBILITY: HEARSAY EVIDENCE OF IDENTITY

Teper *v.* R.

Lord Normand, Lord Oaksey and Lord Tucker
1st July, 1952

Appeal from conviction by the Supreme Court of British Guiana.

The defendant was convicted of maliciously setting fire to his shop. A police constable, when giving evidence by way of identification, said, "I heard a woman's voice shouting, 'Your place burning and you going away from the fire'; immediately then a black car came from the direction of the fire, and in the car was a fair man resembling accused. I did not observe the number of the car." This took place more than a furlong away from the fire, and more than twenty-six minutes after it started. The woman was unidentified and was not called. The defendant contended that the evidence was hearsay, inadmissible, and prejudicial. The Crown contended that the evidence was admissible as part of the *res gestae*, and was not prejudicial.

LORD NORMAND, delivering the judgment of the Board, said that the rule against hearsay evidence was fundamental; it was not the best evidence, nor given on oath, and the speaker could not be cross-examined as to its truth. There were certain limited exceptions, including one that words might be proved when they formed part of the *res gestae*, but to be so admitted the words, on the authorities, must be closely associated in time, place and circumstances with the event in question. This was specially necessary when the evidence was of identity; in such a case the words must be closely related to the commission of the crime itself. The present facts went far beyond any reported case, and the evidence admitted was highly prejudicial, as there was no other evidence as to identity, and the other evidence tendered by the Crown was circumstantial and inconclusive. When reduced to admissible limits, the constable's evidence would have been that in consequence of something which he heard his attention was directed to a black car driven by a man who resembled the defendant. Such evidence was useless to identify the defendant with a man who set fire to a building a furlong away and twenty-six minutes earlier. The jury might well have been unduly influenced, and the verdict could not stand. Appeal allowed.

APPEARANCES: *G. D. Roberts*, Q.C., *Dingle Foot*, M.P., *Solomon* and *C. Lloyd Luckhoo* (of the Trinidad Bar) (*Hy. S. L. Polak and Co.*); *F. Gahan*, Q.C., and *G. Le Quesne* (*Burchells*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HOUSE OF LORDS

CHILD INJURED ON RAILWAY LINE: WHETHER LICENSEE OR TRESPASSER

Edwards *v.* Railway Executive

Lord Porter, Lord Goddard, Lord Oaksey, Lord Morton of Henryton and Lord Reid. 11th July, 1952

Appeal from the Court of Appeal.

The plaintiff, when a child of nine, was playing football with other boys in a public recreation ground adjoining an embanked railway owned by the defendants. The ball was kicked on to the line, the boys went through the dividing fence and found other boys sliding down the railway embankment. The plaintiff, on being dared to climb the embankment and go on to the line to find the ball, did so. He was injured by a passing train and brought an action against the defendants, claiming to be a licensee. According to the plaintiff's case, the embankment and lines were, and were known to the defendants to be, a lure to children, who, unhindered by the defendants, habitually went from the recreation ground on to the lines and embankment to play and slide. The fence frequently had to be repaired. The plaintiff did not know of this practice and had never passed through the fence before. Jones, J., sitting with a jury, entered judgment for the plaintiff. The Court of Appeal allowed an appeal by the defendants. The plaintiff appealed.

LORD PORTER said that there was no allurement in the plaintiff's case. He went on to the defendants' property not to play at tobogganing, but to get the ball, and went on to the line because he was dared to do so. He knew that the fence was there to keep him out and that it was wrong to go on the line. The onus to establish a licence was on the plaintiff, and the first question was whether from the evidence it could be inferred that children had become licensees to pass through the fence and toboggan down the embankment. *Cooke* v. *Midland Great Western Ry. Co. of Ireland* [1909] A.C. 229; 25 T.L.R. 375 had been invoked, but there the circumstances were such that there could be inferred such an assent to the user alleged as to constitute a licence. But such an inference was not to be made lightly, and it was difficult to see what the defendants could do except to mend the fence, as they had done; that seemed to be the extent of their duty. It was carrying the doctrine of implied licence too far to suggest that mere knowledge on the part of the defendants constituted the children licensees. Apart from that, a licence to toboggan down the bank did not import permission to go on to the tracks.

LORD GODDARD said that, when persons were injured on premises where they had no business to be, efforts were made to establish a

licence on the part of the landowner, even when it was obvious that he, if asked, would have objected to their presence. If a child was concerned, *Cooke's* case, *supra*, was sure to be invoked—a case where the facts were highly special and unusual. Repeated trespass conferred no licence; there must be evidence of express permission or of such conduct on the part of the landowner that he could not be heard to say that there was no licence. Here the plaintiff was a mere trespasser.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *J. Platts-Mills* (*Walter O. Stein*); *F. W. Beney*, Q.C., and *Neil Lawson* (*M. H. B. Gilmour*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

NEGLIGENCE: LOSS BY WIFE OF HUSBAND'S CONSORTIUM: WHETHER ACTIONABLE

Best *v.* Samuel Fox & Co., Ltd.

Lord Porter, Lord Goddard, Lord Oaksey, Lord Morton of Henryton and Lord Reid

11th July, 1952

Appeal from the Court of Appeal ([1951] 1 T.L.R. 1138; 95 SOL. J. 352).

The plaintiff's husband, while in the defendants' employment, suffered injury in respect of which he recovered damages. As a result of the injury he became impotent, and the plaintiff's health suffered in consequence. She brought an action alleging (1) that the defendants owed her a duty not to deprive her of the consortium of her husband, and (2) that as the result of the defendants' negligence she had lost that consortium and had suffered damage. The defendants alleged that they owed no such duty, and that the statement of claim disclosed no cause of action. Croom-Johnson, J., dismissed the action, and the Court of Appeal affirmed his decision.

LORD PORTER said that the plaintiff's case was put forward on the analogy of enticement cases such as *Place* v. *Searle* [1932] 2 K.B. 497; 48 T.L.R. 428, which showed that a husband or wife had a cause of action against a person who interfered with his or her consortium with the other spouse. But in those cases the wrong was intentional and deliberate; such cases could not be taken as authority for the proposition that whenever one spouse lost the consortium of the other through injury there was a right of action. The High Court of Australia had held in *Wright* v. *Cedzich* (1930), 43 C.L.R. 493, that a wife had no such right. Even if it could be said that a husband could sue for loss of consortium, it did not follow that at common law a wife had a similar right. He agreed with Lord Goddard in thinking that a husband's right to sue for loss of consortium was an anomaly, and if the law was to be changed, it would be better to abolish the right in the husband than to grant it to the wife.

LORD GODDARD said that there had been some differences of opinion in the Court of Appeal; the conclusion of Asquith, L.J., that there was no right in a wife to sue for either partial or total loss of consortium, appeared to be correct. According to the old authorities, the right of a husband to sue for loss of consortium was based on trespass to a proprietary right which the husband was then thought to have over his wife. But the view as to the relationship of husband and wife had entirely changed since the days of Bracton and Blackstone; if the matter were *res integra* a husband would not now be able to sue for loss of consortium due to negligence. Such a right was now anomalous, and ought not to be extended.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *D. N. Pritt*, Q.C., *N. Black* and *R. P. Smith* (*W. H. Thompson*); *G. Paull*, Q.C., and *G. F. Leslie* (*Corbin, Greener & Cook*, for *Raworth & Co.*, Harrogate).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF APPEAL

ELECTRICITY: ENTITLEMENT TO CASH BALANCE ON NATIONALISATION: APPLICATION FOR CERTIORARI AND MANDAMUS TO COURT OF APPEAL

R. *v.* Minister of Housing and Local Government; *ex parte* Hove Corporation

Singleton, Denning and Romer, L.JJ.

25th June, 1952

Application for orders of certiorari and mandamus.

Under the provisions of the Electricity Act, 1947, and the vesting order made thereunder, the property held by the applicant corporation wholly or mainly in their capacity as authorised electricity undertakers vested on 1st April, 1948, in an electricity board, while cash and investments so held vested in the British Electricity Authority. At the vesting date, the applicant corporation held a balance at the bank of £17,520, which had been received in respect of the electricity undertaking, and which had in the corporation's books been placed to the credit of the general rate fund, pursuant to s. 185 of the Local Government Act, 1933. The authority claimed to be entitled to this sum under the provisions of the Act of 1947; the Minister made a determination in their favour. An application by the corporation for leave to apply for certiorari and mandamus was refused by the Divisional Court, but was granted by the Court of Appeal.

SINGLETON, L.J., said that the corporation raised two points: first, that after payment into the general rate fund, the sum in question was an asset of the corporation for general purposes; second, that it was not held by them wholly or mainly in their capacity as electricity undertakers. In *Allchin* v. *Coulthard* [1942] 2 K.B., at p. 228, Lord Greene, M.R., had pointed out that regard must be had to s. 194 of the Act of 1933 as well as to s. 185, and that, although electricity receipts might be paid into the general rate fund, a local authority could not apply them except in manner authorised by statute or order. The Hove electricity undertaking before the vesting date had been governed by the Electric Lighting Clauses Act, 1907, as amended by the Electricity Supply Act, 1926, which provided that "the amount which may be applied in aid of the local rate in any one year shall not exceed 1½ per cent. of the outstanding debt of the undertaking." In the relevant year the maximum sum permissible had been applied in aid of the rates, and the corporation had received and continued to hold the balance in question as electricity undertakers, and were not entitled to use it otherwise than as prescribed. The corporation failed on both points.

DENNING, L.J., agreeing, said that the application was a novel one in the Court of Appeal, and it might be that a new rule of the R.S.C. was required.

ROMER, L.J., agreed. Application refused.

APPEARANCES: *A. Capewell*, Q.C., and *G. D. Squibb* (*Sharpe, Pritchard & Co.*, for *John E. Stevens*, Town Clerk, Hove); *H. Willis*, Q.C., and *P. Stirling* (*Solicitor to the British Electricity Authority*); *J. P. Ashworth* (*Solicitor, Ministry of Housing and Local Government*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: RENT RESTRICTION: ADULTERY OF WIFE IN OCCUPATION

Wabe *v.* Taylor

Somervell, Birkett and Hodson, L.JJ. 7th July, 1952

Appeal from Wisbech County Court.

The defendants, who were husband and wife, had lived together until 1944 in a house now belonging to the plaintiff, which was subject to the Rent Acts. The husband then left, but the wife remained in the house. There was evidence that the plaintiff, who now claimed possession, knew when he purchased the house in 1950 that the husband was away and that the wife was living in the house, and that the rent book remained in the name of the husband. There was also evidence that the wife had given birth to a child by a lodger in 1948. The plaintiff contended that the wife, by reason of her adultery, had forfeited any rights she might have as a deserted wife to continue in the house. The husband not appearing, the county court judge held that the fact of adultery had not been proved; that the husband had not surrendered the tenancy, and that the claim for possession failed.

SOMERVELL, L.J., said that, although a non-occupying tenant could not claim the protection of the Rent Acts, it was clear that a deserted wife could claim that protection (*Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311; 65 T.L.R. 719). The plaintiff had contended that a wife who had been guilty of a matrimonial offence was no longer protected (*Middleton* v. *Baldock* [1950] 1 K.B. 657; 66 T.L.R. (Pt. 1) 650); but, assuming that there had been a matrimonial offence, and assuming that the husband would thereby be entitled to revoke the licence to the wife to remain in the house, whereby she retained the protection of the Acts, that was a matter between husband and wife, and could not be relied on by a landlord. Further, the plaintiff's claim was defeated by the fact that he purchased the house with knowledge of the circumstances, and had accepted rent from the wife while the husband's name remained on the rent book.

BIRKETT and HODSON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *G. Dare* (*Jaques & Co.*, for *Ollard, Ollard and Sessions*, Wisbech); *J. P. Widgery* (*Metcalfe, Copeman and Pettefar*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

LOCAL AUTHORITY: EXTRANEOUS EMOLUMENTS RECEIVED BY CLERK: SURCHARGE

Carr and Others *v.* District Auditor for No. 1 Audit District

Lord Goddard, C.J., Slade and Parker, JJ. 12th June, 1952

Motion to quash surcharge by district auditor.

In 1949, a rural district council adopted the recommendations set out in a memorandum issued by the Joint Negotiating Committee for Town Clerks and District Council Clerks, in accordance with which the salary of the clerk of the council was increased in scale to £700 per annum for the half-year to 30th September, 1950, and thereafter to £750 per annum. The memorandum stated: "Salary scales within the ranges set out . . . shall be deemed to be inclusive salary scales, and all fees and other emoluments . . . shall be paid by the clerk into the rate fund." During the financial year ending 31st March, 1951, the clerk received and retained, in addition to the salary recommended, £149 for performing the duties of superintendent registrar and £100 as fuel overseer, which sums were not payable to him as clerk of the council, and certain other fees immaterial to the present question. The Local Government Act, 1933, provides by s. 107: "The council may pay to an officer appointed under this section such reasonable remuneration as they may determine." The district auditor, considering that with the retention of the extra emoluments the clerk's salary was unreasonable, surcharged certain councillors in the sum of £115. The councillors moved the court to quash the surcharge.

LORD GODDARD, C.J., said that the district auditor seemed to have used the memorandum as a sort of yardstick, and to have determined that anything received over and above the salary recommended was excessive and unreasonable. It was wrong, however, to construe the memorandum so widely as to hold that the recommended salary scale was to include payments for extraneous activities which were not performed by the clerk as such, and which were not paid for by the council. They had no more to do with his official salary than money he might make by selling produce from his garden. It was not contended that his salary as clerk was unreasonable. The auditor ought not to have taken the extraneous emoluments into account, and the surcharge ought to be quashed.

SLADE, J., agreeing that the surcharge should be quashed, said that he proposed to base his judgment, not on the terms of the memorandum, but on the provisions of s. 107 of the Act of 1933. Under that section, the council was limited by the objective standard of reasonableness; within the wide limits of what was reasonable, the discretion of the council, exercised in good faith, was supreme. There was no evidence to justify the conclusion of law that the council had acted unreasonably.

PARKER, J., agreed that the surcharge should be quashed, for the reasons given by Lord Goddard, C.J.

APPEARANCES: *G. Gardiner*, Q.C., and *R. C. Hutton* (*Boxall and Boxall*, for *Blackburn & Main*, Carlisle); *H. B. Williams*, Q.C., and *M. Lyell* (*Sharpe, Pritchard & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

NEGLIGENCE: INVITEE OR LICENSEE: PASSENGER FROM UNDERGROUND RAILWAY ON MAIN LINE STATION

Bloomstein *v.* Railway Executive

Parker, J. 4th July, 1952

Action.

The plaintiff, after travelling to Euston on an underground line of the London Transport Executive, was making her way through the main line station towards the street, when she tripped over an iron bolt which protruded above the pathway, and was injured. In an action against the defendants, who operated the main line station, she claimed that she was an invitee of the defendants, and that the bolt was an unusual danger. The defendants claimed that the plaintiff was a mere licensee and that they had no knowledge of the danger. Under the provisions of the Transport Act, 1947, the main station and the underground line, which formerly vested in different bodies, became vested in the Transport Commission, whose powers, liabilities and duties became vested in the defendants as regards the main station, and in the London Transport Executive as regards the underground line, under a scheme of delegation: the Act provided by s. 5 (9), "As respects matters for the time being falling within the scope of any such delegation . . . any rights, powers and liabilities of the Commission shall be treated as rights, powers and liabilities of the Executive, and the Executive only. . . ."

PARKER, J., said that the duty of invitor to invitee was owed to the plaintiff by the Transport Commission in regard to both the underground and main line premises. That duty, under the Act, fell upon the London Transport Executive and the defendants, so that the defendants became invitors as agents of the Transport Commission so far as the main station was concerned. Judgment for the plaintiff.

APPEARANCES: *I. H. Jacob* (*Harold Miller & Fraser*); *Neil Lawson* (*M. H. B. Gilmour*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: JURISDICTION: APPEAL ON INTERPLEADER PROCEEDINGS: PLEDGE OF MOTOR CAR

Waight *v.* Waight and Walker

Collingwood, J. 25th June, 1952

Summons adjourned into open court for judgment.

A co-respondent was dismissed from a divorce suit in October, 1951, and the petitioner was ordered to pay his costs. He failed to do so, and in March, 1952, execution was levied upon a motor car. A woman's claim that the car was hers was allowed by the registrar after oral evidence was heard. She said that the car had been pledged to her in September, 1950, in respect of a debt due to her from the petitioner, and as security for future advances. The judgment creditor had submitted that the registration of the car in her name had only been a colourable transaction to put the car beyond the reach of creditors. He further contended that if the transaction were genuine it should have been registered as a bill of sale. The claimant took the preliminary objection at the hearing of the judgment creditor's appeal that the appeal lay to the Divisional Court, and relied upon R.S.C., Ord. 54, r. 22A, and r. 80 of the Matrimonial Causes Rules, 1950; he submitted that r. 59 of those rules did not apply in interpleader proceedings where the registrar was himself exercising the function of a judge. (*Cur. adv. vult.*)

COLLINGWOOD, J., referred to *Bernbaum* v. *Bernbaum* [1948] W.N. 463; 65 T.L.R. 62, in which Barnard, J.'s decision in respect of an appeal under s. 17 of the Married Women's Property Act, 1882, had been upheld by the Court of Appeal, ([1949] P. 325). It was there held upon a similar submission that the appeal lay to the judge in chambers, and in his (his lordship's) opinion r. 59 applied in the present proceedings. He did not propose, however, to interfere with the finding of the registrar who had seen and heard the witnesses. He further held that the transaction had not been affected by the Bills of Sale Acts. There had been a simple pledge in which immediate possession of the car had passed, and the transaction was complete without any writing; the fact that the registration book had been handed over did not bring the transaction within the Acts. It was a pledge, and the Acts, which were aimed at documents and not at transactions, did not apply to a pledge as distinguished from an assurance or licence to take possession. Appeal dismissed.

APPEARANCES: *Richard Vick* (*Bateman & Co.*); *Dobry* (*Markham Thorp & Co.*)

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: PRACTICE: ANSWER WITHIN THREE YEARS OF MARRIAGE

Hollingsworth *v.* Hollingsworth

Collingwood, J. 25th June, 1952

Summons adjourned into open court for judgment.

The parties were married in June, 1950, and in January, 1952, the wife obtained leave to present a petition for divorce on the ground of cruelty. The husband by his answer denied the allegations, cross-charged cruelty, and prayed for a divorce. He made no separate application under s. 2 of the Matrimonial

Causes Act, 1950, whereby "no petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of the marriage. Provided that a judge of the court may . . . allow a petition to be presented before three years have passed on the ground . . . of exceptional hardship . . . or of exceptional depravity. . . ." The wife applied by summons for the allegations of cruelty, and the prayer, to be struck out from the answer. The registrar dismissed the summons and the wife appealed in respect of the prayer for dissolution only. (*Cur. adv. vult.*)

COLLINGWOOD, J., dismissed the appeal. He said that s. 2 related solely to a petition, and was a restriction on the initiation of a suit. The provision as to relief to a respondent was to be found in s. 6 of the Act, whereby "if in any proceedings for divorce the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief." The relief which the court could give involved the assumption that he or she had in fact presented a petition: it did not subject the answer to the restriction which was applicable to the presentation of a petition. Moreover, to subject the answer to such restriction would either preclude the court from doing justice as between the parties if leave were withheld, or leave would be given as a matter of course on the ground of exceptional hardship, with the attendant unnecessary expense. Appeal dismissed.

APPEARANCES: *John Mortimer* (*G. E. C. Dougherty*, Law Society Divorce Department); *Michael Hoare* (*Warmingtons*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: INJUNCTION: JURISDICTION TO RESTRAIN COUNTY COURT PROCEEDINGS

Murcutt *v.* Murcutt

Willmer, J. 9th July, 1952

Summons for injunction.

A wife presented a petition for divorce on the ground of alleged cruelty; but she remained in the matrimonial home with her husband and the two daughters of the marriage, both over twenty-one. The husband, who was the tenant of the house, instituted proceedings in the county court to evict the two daughters. The wife, who had alleged, *inter alia*, in her petition that the husband had threatened to turn the daughters out of the home by a court order, adding that when they had gone she would go too, sought an injunction to restrain the husband from prosecuting the proceedings in the county court. She conceded at the hearing of the summons for the injunction that the husband would succeed in obtaining an eviction order if the judgment were heard, but submitted that, although proceedings for eviction could not affect her own position in law, the practical effect of an eviction order against the daughters would be that she would be forced to leave also. She referred to the delicate health of one of the daughters who needed her special attention. The wife sought a further injunction to restrain the husband from molesting her, and the husband gave an undertaking not to do so.

WILLMER, J., held that he had jurisdiction to make the order prayed. He said, however, that such an order would be a very unusual one to make, especially in view of the fact that the county court proceedings were between different parties. An order of the unusual and indeed extreme nature sought by the wife ought only to be made if the court were satisfied on the evidence that in the absence of such an order the wife would suffer irreparable harm. That was not the case here; the wife would not be legally bound to leave if the daughters were evicted; if she left it would be in pursuance of normal human affection. If, however, the daughters (who would be given time to find alternative accommodation) were evicted and the wife was forced by her husband's conduct to leave the matrimonial home, that matter would be taken into consideration on an application for alimony pending suit. Further, if the wife obtained a decree (as she would if the evidence before the court were established), the marriage would be dissolved and she would lose her right to live in the matrimonial home. The injunction sought would therefore only act as a postponement. Application refused.

APPEARANCES: *Brian Gibbens* (*Henry Flint*, Southend-on-Sea); *Robin Dunn* (*Shelton, Cobb & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Civil List Bill [H.C.] [24th July.

Read Second Time:—

Aberdeen Extension Order Confirmation Bill [H.C.] [24th July.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Aberdeen Extension.

Scottish Amicable Life Assurance Society Bill [H.C.] [23rd July.

Read Third Time:—

Affiliation Orders Bill [H.C.] [21st July.
Agricultural Land (Removal of Surface Soil) Bill [H.L.] [21st July.
Children and Young Persons (Amendment) Bill [H.C.] [23rd July.
City of London (Guild Churches) Bill [H.C.] [22nd July.
Crown Lessees (Protection of Sub-tenants) Bill [H.C.] [21st July.
Customs and Excise Bill [H.C.] [24th July.
Disposal of Uncollected Goods Bill [H.C.] [22nd July.
Fareham Urban District Council Bill [H.C.] [21st July.
Glossop Water Bill [H.C.] [21st July.
Heating Appliances (Fireguards) Bill [H.C.] [22nd July.
Housing Bill [H.C.] [24th July.
Hypnotism Bill [H.C.] [24th July.
Kilmarnock Corporation Order Confirmation Bill [H.C.] [21st July.
Lancaster Palatine Court (No. 2) Bill [H.C.] [24th July.
Leith Harbour and Docks Order Confirmation Bill [H.C.] [21st July.
Magistrates' Courts Bill [H.L.] [21st July.
Newcastle upon Tyne Corporation Bill [H.C.] [23rd July.
Pensions (Increase) Bill [H.C.] [24th July.
Pier and Harbour Provisional Order (Brighton) Bill [H.C.] [21st July.
Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [21st July.
Pier and Harbour Provisional Order (Herne Bay) Bill [H.C.] [21st July.
Pier and Harbour Provisional Order (King's Lynn) Bill [H.C.] [21st July.
Pier and Harbour Provisional Order (Minehead) Bill [H.C.] [21st July.
Pier and Harbour Provisional Order (Seaham Harbour) Bill [H.C.] [21st July.
Rating and Valuation (Scotland) Bill [H.C.] [24th July.
Rochdale Canal Bill [H.C.] [21st July.
Scottish Mutual Assurance Society Bill [H.C.] [22nd July.
Town Development Bill [H.C.] [22nd July.
Visiting Forces Bill [H.L.] [22nd July.

In Committee:—

Cockfighting Bill [H.C.] [22nd July.

B. DEBATES

On the Committee Stage of the **Lancaster Palatine Court (No. 2) Bill** the LORD CHANCELLOR said he had looked into the problem of a legal aid case being transferred from the High Court to the Palatine Court. There was no legal aid in the Palatine Court, just as there was no legal aid in the county court, except where cases were transferred from the High Court to the county court and legal aid had been given in the High Court. Some of the cases begun in the High Court and transferred to the Palatine Court might well have begun with legal aid, and they should, of course, be continued with legal aid in the Palatine Court. The Treasury had signified their agreement to the making of regulations by the Lord Chancellor extending the benefits of the Legal Aid Act, in connection with proceedings in the Chancery Court, to the County Palatine of Lancaster, in, or in connection with,

any cause or matter transferred thereto from the High Court. This would be effected by regulations made by him under s. 1 of the Legal Aid and Advice Act, 1949. They would require an affirmative resolution of each House of Parliament. LORD MANCROFT said he was grateful for this extremely satisfactory result of his intervention. [21st July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time :—

Agriculture (Calf Subsidies) Bill [H.C.] [25th July.
Insurance Contracts (War Settlement) Bill [H.L.] [25th July.

Read Third Time :—

Clifton Suspension Bridge Bill [H.L.] [24th July.
Costs in Criminal Cases Bill [H.L.] [25th July.
Dundee Harbour and Tay Ferries Order Confirmation Bill [H.C.] [25th July.
Isle of Man (Customs) Bill [H.C.] [25th July.
Nottingham Corporation Bill [H.L.] [21st July.
Prison Bill [H.L.] [25th July.

B. QUESTIONS

COURT FUNDS (INTEREST)

Mr. HIGGS asked whether, in view of the increase in the bank rate, the Supreme Court Funds Rules and the County Court Funds Rules would be amended so as to allow a higher rate of interest on funds ordered by the court to be invested ? Would the Attorney-General represent in the proper quarters that much of the money invested in the courts was invested on behalf of infants who had been awarded damages and that there was no option but that it should remain there ? SIR LIONEL HEALD said that the Lord Chancellor was considering, in consultation with the Chancellor of the Exchequer, whether an increase in the rate of interest on court funds was justifiable. He would convey Mr. Higgs' observations to the appropriate quarters. [21st July.

RENT RESTRICTION ACTS

The ATTORNEY-GENERAL said that the codification and general question of the Rent Restriction Acts was not considered by the Lord Chancellor to be a suitable subject for consideration by the Law Reform Committee. He agreed that one of the considerations which had been borne in mind was that there would have to be various changes in the Acts, the effect of which would be to increase rents. [21st July.

OFFICIAL SECRETS ACTS (PENALTIES)

Asked by Brigadier MEDLICOTT whether he was aware that the penalties for certain breaches of the Official Secrets Acts appeared to be unduly lenient having regard to the close association between offences under those Acts and offences against the law of treason, and if he would consider this aspect of the matter in his general review of the law of treason, the HOME SECRETARY, on behalf of the Attorney-General, said that Her Majesty's Government, in view of their responsibilities for the security of the realm, had to keep clearly under review the adequacy of the laws in this particular field. They were not satisfied that the present circumstances required any amendment of the existing law, but should the necessity arise they would not hesitate to submit proposals for an alteration in the law for the approval of Parliament. [21st July.

TRIAL CERTIFICATES (DELAYS)

Mr. HAY asked the Attorney-General why there was currently a delay of at least a week before the Associate's certificate of trial of an action in the Queen's Bench Division could be obtained, and if he would expedite the issue of such certificates. The ATTORNEY-GENERAL said the present delay of about five or six days was caused by the delay in typing the certificates. Steps had been taken to expedite the procedure. He would be glad to know of any recent instances of delay so that he could have them investigated. [21st July.

INKEEPERS' LIABILITY LAW (REVIEW)

The ATTORNEY-GENERAL stated that the Lord Chancellor had it in mind to refer the question of innkeepers' liability towards guests and travellers to the Law Reform Committee when that committee had considered the matters already referred to it. [21st July.

COPYRIGHT LAW (REPORT)

Mr. PETER THORNEYCROFT said that he understood the drafting of the report of the Copyright Committee was now at an advanced stage and he trusted that it would be presented before the next session of Parliament. [22nd July.

CORPORAL PUNISHMENT

Sir DAVID MAXWELL-FYFE said that the question of corporal punishment was kept constantly under review, but he must not be taken as assenting to the proposition that the case for restoring corporal punishment either for the offences for which it could formerly be awarded or for a wider range of offences had been established or that this controversial matter was one requiring an urgent solution. For the good name of the country as a whole it ought to be made clear that the figures of the crimes previously punished by corporal punishment had not risen but had steadily declined. [24th July.

CRIMES OF VIOLENCE

The HOME SECRETARY gave the following statistics : during 1951, 7,188 offences of murder, attempted murder, manslaughter, wounding, indictable assault, robbery and rape were known to the police in England and Wales. Four thousand two hundred and seventy-four persons were found guilty of such offences and, of those persons convicted at assizes and quarter sessions, 269 were sentenced to preventive detention or to imprisonment or corrective training for more than two years. In 1936, 2,533 such offences were known to the police. One thousand four hundred and twenty-two persons were found guilty of such offences. Sixty-eight of the persons convicted at assizes and quarter sessions were sentenced to penal servitude for three years or more. [24th July.

STATUTORY INSTRUMENTS

Agricultural Holdings (Service Men) (Scotland) Regulations, 1952. (S.I. 1952 No. 1338 (S. 64).) 5d.

Carriage by Air (Parties to Convention) (No. 2) Order, 1952. (S.I. 1952 No. 1344.)

Control of Rates of Hire of Plant (Revocation) Order, 1952. (S.I. 1952 No. 1354.)

East Sussex River Board (Transfer of Navigation Functions) Order, 1952. (S.I. 1952 No. 1353.) 5d.

Education (Local Education Authorities) Grant Regulations, 1952. (S.I. 1952 No. 1331.) 8d.

Foreign Marriage (Amendment No. 2) Order, 1952. (S.I. 1952 No. 1346.)

Harbours, Piers and Ferries (Provisional Order, Publication of Notice) (Scotland) Amendment Order, 1952. (S.I. 1952 No. 1337 (S. 63).)

House of Commons (Redistribution of Seats) (Nottingham South and Rushcliffe) Order, 1952. (S.I. 1952 No. 1347.)

House of Commons (Redistribution of Seats) (Stockton-on-Tees and Sedgefield) Order, 1952. (S.I. 1952 No. 1348.)

House of Commons (Redistribution of Seats) (Swindon and Devizes) Order, 1952. (S.I. 1952 No. 1349.)

House of Commons (Redistribution of Seats) (Worcester and South Worcestershire) Order, 1952. (S.I. 1952 No. 1350.)

Import Duties (Drawback) (No. 8) Order, 1952. (S.I. 1952 No. 1321.)

Import Duties (Drawback) (No. 9) Order, 1952. (S.I. 1952 No. 1339.)

Judicial Committee (Ceylon) Order, 1952. (S.I. 1952 No. 1345.)

London Traffic (Prescribed Routes) (No. 15) Regulations, 1952. (S.I. 1952 No. 1342.)

Meat (Rationing) (Amendment No. 3) Order, 1952. (S.I. 1952 No. 1329.)

Medical Act, 1950 (Appointed Day) Order of Council, 1952. (S.I. 1952 No. 1336 (C. 8).)

This order appoints 1st January, 1953, as the appointed day for the purposes of ss. 1 and 7 (6) of the Medical Act, 1950.

National Assistance (Adaptation of Enactments) Regulations, 1952. (S.I. 1952 No. 1334.) 5d.

Paignton Urban District Council Water Order, 1952. (S.I. 1952 No. 1322.)

Perambulators (Maximum Prices) (Revocation) Order, 1952. (S.I. 1952 No. 1319.)

Personal Injuries (Civilians) (Amendment) (No. 2) Scheme, 1952. (S.I. 1952 No. 1351.) 5d.

Postal Order Amendment (No. 2) Warrant, 1952. (S.I. 1952 No. 1366.)
Representation of the People (Northern Ireland) Regulations, 1952.
Returning Officers' Expenses (Scotland) (Amendment) Regulations, 1952. (S.I. 1952 No. 1364.)
Stopping up of Highways (Birmingham) (No. 1) Order, 1952. (S.I. 1952 No. 1324.)
Stopping up of Highways (East Riding of Yorkshire) (No. 2) Order, 1952. (S.I. 1952 No. 1328.)
Stopping up of Highways (Essex) (No. 5) Order, 1952. (S.I. 1952 No. 1326.)
Stopping up of Highways (Kent) (No. 3) Order, 1952. (S.I. 1952 No. 1341.)
Stopping up of Highways (Lincolnshire–Parts of Lindsey) (No. 2) Order, 1952. (S.I. 1952 No. 1325.)
Stopping up of Highways (London) (No. 10) Order, 1952. (S.I. 1952 No. 1327.)
Superannuation (Transfers between the Civil Service and Public Boards) (Amendment) Rules, 1952. (S.I. 1952 No. 1330.)
Timber (Control) (Amendment) Order, 1952. (S.I. 1952 No. 1340.)
Training of Teachers Grant Amending Regulations No. 2, 1952. (S.I. 1952 No. 1361.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Rent Acts—Possession—"Pecuniary Gain"—Second Application on Same Grounds

Q. Our client, Mrs. R, a widow, is the owner of No. 10 High Street, which she bought about twenty years ago, subject to the existing tenancy. She herself is the tenant of No. 4 High Street, a house with the same accommodation and slightly lower rent. About a year ago Mrs. R applied to the county court for possession of her house and offered the tenant the tenancy of the house at No. 4 High Street as suitable alternative accommodation, the landlord being quite willing to accept the change of tenant. The judge apparently held (we did not then act for Mrs. R) that, although the alternative accommodation was entirely suitable, he would not grant the possession order because it was alleged by a witness that Mrs. R had said she would sell the house once she obtained possession. This was strenuously denied by Mrs. R, but the judge believed the witness. Mrs. R now desires to apply again for possession of her house. The grounds are substantially the same. Presumably the case would come before the same judge. If the judge is satisfied that the alternative accommodation is reasonable can he reject an application for possession on the sole ground that the applicant requires possession to sell the house? Do you consider that it might amount to contempt of court to undertake such an action, on the same facts and before the same judge, where the action has already once been tried and the application rejected?

A. The decision of about a year ago accords, up to a point, with *Cresswell* v. *Hodgson* [1951] 2 K.B. 92; 1 T.L.R. 414 (C.A.), in which it was held (perhaps rather surprisingly, in view of what was said in *Cumming* v. *Danson* (1942), 112 L.J.K.B. 145 (C.A.), about "reasonableness" when alternative accommodation is proved to be available) that an order had been rightly refused on the ground that all the plaintiff sought was "pecuniary gain," while the alternative accommodation, though just suitable, meant more rent and the cost of removal. In our opinion, it should be possible to distinguish this decision even if the court again finds as a fact that the landlord proposes to sell the house, especially if the rent of No. 4 is *well* within the tenant's means. *Cumming* v. *Danson*, *supra*, does not appear to have been cited in *Cresswell* v. *Hodgson*. There could be no question of contempt, as the Acts merely forbid the making of an order unless certain conditions are fulfilled, and do not confer any right of action, the cause of action being the determination of the contractual tenancy (*Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.)), and the "conditions" in this case are the circumstances obtaining at the date of the hearing (*Kimpson* v. *Markham* [1921] 2 K.B. 157; *Benninga (Mitcham), Ltd.* v. *Bijstra* [1946] K.B. 58 (C.A.)). What was reasonable and also what was suitable about a year ago need not be reasonable or suitable now or when the case is heard.

Will—Trust for Two Adults and an Infant as Tenants in Common—Form of Assent—Retirement of Trustees

Q. A, deceased, by a codicil to his will, specifically devised six cottages "in trust for X, Y, and Z, in equal shares as tenants in common." The will appointed two executors and trustees who are both of advanced age. Z is an infant of fifteen years of age. What form of assent is required?

A. The proper course is for the executors to assent to the legal estate vesting in themselves as trustees for sale and to hold the net proceeds of sale and the net rents and profits until sale upon the trusts of the will of A, deceased. They cannot assent directly in favour of X and Y, for they are not the only persons "entitled" within s. 36 (1) of the Administration of Estates Act, 1925, nor can they appoint new trustees under s. 42 (1), since not only are there adult beneficiaries besides the infant but the executors are made express trustees. If they desire to retire they may do so immediately or later, as, for example, when Z attains the age of twenty-one years, by adopting the ordinary procedure for retirement and appointment of trustees (Trustee Act, 1925, s. 39). If it is decided to wait until Z becomes of age, X, Y and Z could then be appointed trustees and the legal estate thus vested in them (under the Trustee Act, 1925, s. 40), and they would hold the legal estate as joint tenants upon trust for sale and subject thereto upon trust for themselves as tenants in common.

Conveyance of Land to Two Corporations—Trust for Sale—Effect of Rule against Perpetuities

Q. We are acting for two rural district councils (and also for the vendor) in connection with the purchase by them of certain freehold premises which are to be used by the councils to accommodate their clerks and other officials and for council meetings, etc. Each council is providing part of the purchase money. While there is no difficulty in the preparation of a conveyance in favour of one council, we wonder whether it is possible for property to be conveyed to two such local authorities as tenants in common. If so, what form would the declaration of trust in the conveyance take, in particular having regard to the perpetuity rule? If not, what procedure can be adopted to effectuate the wishes of the purchasers?

A. Having regard to the provisions of the Bodies Corporate (Joint Tenancy) Act, 1899, there is no objection to the conveyance being made to the two councils as joint tenants, and this will, no doubt, be most convenient in view of possible amalgamation or dissolution. As, however, our subscribers correctly point out, the difficulty arises in connection with the trust for sale, which in order to be valid must take effect within the period permitted by the rule against perpetuities (*Re Daveron* [1893] 3 Ch. 421). We therefore suggest that the only course open in the present circumstances is for the councils as joint tenants to hold the land upon trust for themselves as tenants in common. We appreciate that this will bring the equitable interests on to the title, but we do not see how this can be avoided. As neither council will presumably dispose of their equitable interest the title thereto will not be difficult for a subsequent purchaser to investigate and the conveyance to him will be by the councils as trustees by direction of themselves (each directing as to its share as beneficial owner). If, to simplify matters during the longest permissible period, a trust for sale is desired, we see no objection to the land being conveyed to the councils as joint tenants upon trust for sale with the usual trusts of the proceeds and a proviso that, if no sale is effected within twenty-one years after the death of the last surviving descendant of Queen Elizabeth II living at the date of the conveyance, the councils are to hold the land freed and discharged from the trust for sale, but upon trust for themselves as tenants in common. In either case, the tenancy in common should be expressed to be in the shares and proportions in which they have respectively contributed the purchase money, which will no doubt be separately shown in the consideration.

Will—Trustee Charging Clause—Validity—Trustee's Partner Attesting Will

Q. T has recently died and by his will has appointed X and Y his executors. Y is a solicitor and the will gives any trustee who is a solicitor power to charge for professional business done by him or his firm in connection with the trusts of the will. Z, who is Y's partner in the firm of solicitors, witnessed the will. The estate is being administered by the firm of Y and Z, so Z will indirectly obtain benefit as being a member of the partnership of Y and Z. Will the charging clause in the will therefore be invalid under s. 15 of the Wills Act, 1837 ?

A. We see no reason for regarding the charging clause as invalid in the present case. So far as concerns Y, he is entitled to charge his share of the profit costs by reason of the charging clause in the will which he has not attested (*Re Pooley* (1888), 40 Ch. D. 1). Z is entitled to charge his share of the profit costs by reason of services rendered by him or his firm to the trustees of T's will, of whom he (Z) is not one. He is thus in the same position as any other solicitor, and the fact that he has attested the will is immaterial since he derives no benefit thereunder, but only from his employment by the trustees (*Clack* v. *Carlon* (1861), 30 L.J. Ch. 639). The disability of an attesting witness to benefit under the will does not extend to his partner in business.

Nomination of Moneys at Post Office Savings Bank—Not Revoked by Subsequent Will—Incidence of Estate Duty—Inheritance (Family Provision) Act, 1938

Q. In 1948 a testator made a will whereby he revoked all former wills, etc., and (*inter alia*) gave pecuniary legacies to various members of his family and to charities amounting to approximately £2,000, and declared that the residue of his estate be divided between his four children. The assets of the estate are comprised of a Post Office Savings account, Trustee Savings account and 3½ per cent. War Stock amounting in total value to approximately £4,500. I am informed by the Savings Division that the deceased made a nomination in favour of one of his children (over twenty-one) in 1927 comprising moneys in the Post Office and War Stock. The moneys subject to the nomination amount to just over £4,000, and the free estate will be approximately £400. Death duties have been assessed at 3 per cent. on the total estate. The savings account of which the deceased was the owner at his death was a different account from that subject to the nomination, and a specific portion of the War Stock was purchased also after the date of the nomination. Before making his will in 1948 the deceased is known to have torn up the nomination form with the expressed intention of revoking same and to have executed his new will in the belief that by so doing he had revoked the nomination. This intention of the testator can be substantiated by evidence, but according to the Post Office regulations such revocation was ineffective unless revoked formally by filing notice thereof at the Savings Bank Division.

The effect of these regulations is to totally disregard the intention of the testator and to make ineffective the revocation clause contained in his will. It will mean that the beneficiaries will be paid out on a *pro rata* basis a share of approximately 10 per cent. of their legacy. With regard to death duties, there appears to be no method of protecting the executors and enabling them to recover a proportionate part of death duties from the nominee, and if the nominee desires to draw her money the executors would appear to bear the full estate duty with recourse only to the nominee herself.

Is there any possibility of upsetting the nomination and giving effect to the true intention of the testator ? What would be the effect of the Inheritance (Family Provision) Act, 1938, if, for example, a deceased person had nominated his moneys in the Post Office to his mistress and left nothing to his widow ? If such nomination be irrevocable the Act would prove ineffective.

A. We regret that we are unable to see any grounds upon which the nomination can be upset. There is authority in the decisions of the Chief Registrar of Friendly Societies (*Re Couling*, Report of 1923, p. 54) which shows that neither cancellation nor destruction by any means revokes a nomination. It would not even appear possible to suggest that in the events which have happened the nominee must be regarded as holding the nominated property upon trust for the beneficiaries under the will, owing to the absence of any evidence that the nominee has accepted such a trust. The most that can be said in this connection is that the nominee would appear to lose her benefit under the will by the operation of the doctrine of election. There is a decision of the Chief Registrar (*Re Dunn*, Report of 1925, p. 13), where it was held that a nomination executed in respect of one account, although suspended upon the account being closed, is revived upon opening a new account, and the amount standing to the credit of the later account at the date of the nominator's death will pass under the nomination. We are not aware of a similar decision in the case of stock purchased after the date of the nomination, but this would appear covered under the terms of the regulations. So far as concerns death duties on the nominated assets, these are the ultimate liability of the nominee, and although the executors are also liable (the property being within the testator's disposition) they can obtain an order from the Chief Registrar for the duties to be stopped out of the Post Office account or charged on the stock (*Re Vere*, Report of 1925, p. 13). It may be noted that the limit of £100 imposed by the Savings Bank Act, 1887, remains so far as concerns Trustee Savings Bank accounts and stocks held on their registers. So far as concerns the application of the Inheritance (Family Provision) Act, 1938, the testator's " net estate " out of which the court can order maintenance or capital provision for his dependants is defined (s. 5 (1)) as meaning all the property of which a testator had power to dispose by his will. In this connection we consider that it is open to argument that nominated property is capable of such disposal since the testator can place it within his powers of disposition by revocation of the nomination in the prescribed manner (*Dillon* v. *Public Trustee of New Zealand* [1941] A.C. 294, where it was held that a contract to leave certain property to particular beneficiaries could not interfere with the court's powers to order a redistribution of the testator's estate under the provisions of the analagous New Zealand Act).

NOTES AND NEWS

Honours and Appointments

Mr. A. M. S. Stevenson, Q.C., has been appointed Recorder of the City of Cambridge.

Mr. A. W. McKenzie, an Assistant Secretary of the Board of Trade, has been appointed Administrator of Japanese Property.

Personal Notes

Mr. A. B. Bowles, solicitor, of Watford, was married on 12th July to Miss Patricia Manley Cooper, of East Preston.

Mr. J. P. D. R. Ormiston, Coroner for West Berkshire, has recently celebrated his golden wedding anniversary.

His Honour Judge William Stewart, who is retiring from the Bench after twenty years' service, sat for the last time at Leeds County Court on 23rd July. On behalf of members of the Bar the Recorder of Leeds, Mr. G. Raymond Hinchcliffe, paid tribute to the work of the judge, as did the Registrar, Mr. J. H. Lawton, and Mr. Louis Godlove on behalf of the Leeds Incorporated Law Society. In his reply, Judge Stewart said that he had enjoyed every minute of his work.

Mr. J. P. Varley, solicitor, of Coventry, was married on 12th July to Miss Jacqueline Mary Taylor, of Emley Woodhouse, near Huddersfield.

Miscellaneous

Coronation of Her Majesty

Court of Claims

The Right Honourable the Commissioners appointed by Her Majesty to hear and determine all Claims of Services to be performed at the time of Her Majesty's Coronation (except those dispensed with by Her Majesty's Royal Proclamation of the 6th day of June last) and of fees to be received for the same, at their meeting held at the Council Office, Whitehall, on the 21st day of July, 1952, resolved as follows :—

(*a*) All claims must be made by petition. Petitions may be sent under cover to the Clerks to the Court of Claims, Privy Council Office, Downing Street, London, S.W.1.

(*b*) Petitioners are not required to appear in person before the court unless summoned.

(*c*) Petitioners may appear by counsel, solicitors or agents.

(*d*) If a claim was admitted in 1936 or 1937 the petitioner or his present representative should lodge a short formal petition stating that he is the same petitioner, or his representative, and, if a representative, in what capacity, and that the petition was allowed in 1936 or 1937.

(*e*) If there is no counter-claim, the clerks shall forthwith place the claim in the list in order that it may be formally admitted upon the court being satisfied that the claimant represents the person whose claim was admitted in 1936 or 1937. In these cases, the petitioner need not appear in person or by counsel, solicitor or agent.

(*f*) The clerks shall not place in the list any claim excluded by the court in 1936 on the ground that the claim was inappropriate to the Coronation by reason of the Royal Proclamation.

(*g*) Any claim now made, which was referred by the court in 1936 to the Executive Committee for the purposes of arrangements for the Coronation, shall be referred by the clerks to the same committee.

(*h*) Petitioners are to present their claims by the 10th day of October next.

(*i*) Petitions shall be in the form following :—

" To the Right Honourable
the Commissioners appointed to hear, receive and determine the Petitions and Claims concerning the Services to be done and performed at Her Majesty's Coronation.

The Petition and Claim of
(Here state name, title and abode of petitioner.)

Sheweth

That

(Here set out the claim and the facts on which it is founded.)

Your Petitioner therefore claims

(Here repeat the claim.)

And your Petitioner will ever pray etc.

(Signature of Petitioner.) "

Each petition shall be accompanied by twelve copies, which may be printed or reproduced by type, lithography, photostat, or stencil duplicating, and the type to be used shall be a type producing a clear and legible impression.

The Commissioners are required by the Proclamation to exclude from their consideration such claims as may be submitted to them in respect of rights or services connected with the parts of the ceremonial heretofore performed in Westminster Hall, and with the procession, the ceremony being confined to Westminster Abbey.

The court stands adjourned till Friday, the 31st day of October next at 11 a.m.

The offices of the Inspector of Foreign Dividends at Lynwood Road, Thames Ditton, Surrey, and Turnstile House, 94–99 High Holborn, W.C.1, were removed to Neville House, 55 Eden Street, Kingston-on-Thames, Surrey (Telephone : Kingston 9941), as from 14th and 21st July, 1952, respectively. Oversea tax rates continue to be computed at Lynwood Road, Thames Ditton (Telephone : Emberbrook 4141, Extension 89). The inspector's City branch office remains at Lloyds Bank Buildings, 55–61 Moorgate, London, E.C.2, and is open for public business as from 21st July, 1952, between 10 a.m. and 4 p.m. from Monday to Friday, and 10 a.m. to noon on Saturday.

A delegation from the Federal Republic of Western Germany and representatives of the Board of Inland Revenue have met in London to discuss the conclusion of a convention for the relief of double taxation. The discussions will be continued in Bonn in the autumn.

At The Law Society's Intermediate Examination held on 19th and 20th June, sixteen candidates gave notice for the whole examination, of whom three passed both parts, six passed the Law Portion only and one passed the Trust Accounts and Book-keeping Portion only. 236 candidates gave notice for the Law Portion only, of whom 130 passed (four in the First Class), and 224 candidates gave notice for the Trust Accounts and Book-keeping Portion only, of whom 105 passed.

At The Law Society's Preliminary Examination held on 30th June and 1st, 2nd and 3rd July, forty-eight candidates passed out of 141.

It has been announced from Buckingham Palace that the Queen is to lay the foundation stone of the new hall of the Inner Temple on 13th November. The ceremony was to have taken place last October, but was postponed because of the late King's illness. The new hall and library, designed by Sir Hubert Worthington, are to replace the building destroyed by bombing.

THE SOLICITORS ACTS, 1932 TO 1941

On the 10th day of July, 1952, the practising certificate of Jack Leslie Raymond Webb, now of 19 Grovelands Road, London, N., recently of Cardiff and formerly of 53 High Street, Hornsey, N.8, Solicitor of the Supreme Court, was suspended by virtue of the fact that he was adjudicated a bankrupt on the 10th day of July, 1952.

Isaac Rosen, of Bodmin, Cornwall, Solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he has been appointed Resident Magistrate, Kenya, and desires in due course to be called to the Bar, an order was, on the 17th day of July, 1952, made by the Committee that the application of the said Isaac Rosen be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

DEVELOPMENT PLANS

City and County of Bristol Development Plan

The development plan for the above city and county was on 21st July, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the City and County of Bristol. A certified copy of the plan as submitted for approval may be inspected at the Council House, Corn Street, Bristol, 1, from 9 a.m. to 5 p.m. (Saturdays, 9 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 8th September, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Council of the City and County of Bristol, c/o the Town Clerk, Council House, Bristol, 1, and will then be entitled to receive notice of the eventual approval of the plan.

Glamorgan Development Plan—Area No. 1

The above development plan was on 21st July, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County of Glamorgan and comprises land within the County Districts of Neath Municipal Borough, Port Talbot Municipal Borough, Bridgend Urban District, Maesteg Urban District, Glyncorrwg Urban District, Porthcawl Urban District, Ogmore and Garw Urban District (except the Abercerdin Ward), Neath Rural District (except for the greater part of the parish of Rhigos), Penybont Rural District (except for the Parishes of St. Bride's Major and Wick), and the Parish of Peterston-super-Montem and part of the Parish of Llanharan in the Cowbridge Rural District.

Certified copies of the plan as submitted for approval have been deposited for public inspection at the following places, viz. :—

(*a*) Glamorgan County Hall, Cathays Park, Cardiff.

(*b*) The Office of the Area Planning Officer (Southern), Waterton Depot, Bridgend.

(*c*) The Office of the Area Planning Officer (Western), Midland Bank Chambers, Neath.

Certified copies or extracts of the development plan so far as it relates to the undermentioned districts have also been deposited for public inspection at the places mentioned below, viz. :—

(*a*) Port Talbot Municipal Borough—Municipal Buildings, Port Talbot.

(*b*) Glyncorrwg Urban District—Council Offices, Cymmer.

(*c*) Maesteg Urban District—Council Offices, Maesteg.

(*d*) Porthcawl Urban District—Council Offices, South Road, Porthcawl.

(*e*) Ogmore and Garw Urban District—Council Offices, Brynmenyn.

(*f*) Cowbridge Rural District—Council Offices, Eastgate, Cowbridge.

The copies or extracts of the plan so deposited may be inspected from 9.30 a.m. to 4.30 p.m. (Saturdays, 9.30 a.m. to 11.30 a.m.).

Any objection or representation with reference to the plan may be sent in writing to the Under-Secretary, Welsh Office, Ministry of Housing and Local Government, Cathays Park, Cardiff, before 1st October, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Glamorgan County Council, County Hall, Cardiff, and will then be entitled to receive notice of the eventual approval of the plan.

The documents comprised in and those relating to the plan are available for sale to members of the public who are interested, at the prices enumerated below, viz. :—

Document	*Price to public*
	£ s. d.
Report of Survey	2 2 0
Written Statement	2 6
County Map, Town Maps, Programme Maps, and Land Use Maps	10 6 each
Maesteg Advisory Town Map	5 0
Advisory Village Maps of Glynneath, Pencoed and Crynant	5 0
Designation Maps	1 1 0 per set of 30
	2 0 per map.

Members of the public wishing to purchase any of these documents are requested to make application therefor to the County Planning Officer, County Hall, Cardiff.

Distribution of German Enemy Property
Claims Procedure for Non-Reich Sterling Bonds

The Distribution of German Enemy Property Act, 1952, which came into force on 26th June, modifies the statutory conditions governing claims in respect of the following German "non-Reich" sterling bonds, viz. :—

Enfaced bonds of the City of Saarbruecken 6 per cent. Sterling Loan of 1928.

Any bonds of the :—

Potash Syndicate of Germany 25-year Sinking Fund Gold Loan.

City of Berlin 6 per cent. Sterling Loan, 1927.

City of Cologne 6 per cent. Sterling Loan, 1928.

City of Dresden 5½ per cent. Sterling Loan of 1927.

City of Munich 6 per cent. Sterling Bonds.

State of Hamburg 6 per cent. Sterling Loan of 1926.

Hamburg Waterworks 6 per cent. Sterling Loan.

The Free State of Saxony 6 per cent. 25-year Sterling Bonds of 1927.

Province of Westphalia 7 per cent. Sterling Loan of 1926.

Prussian Electric Company 6 per cent. 25-year Sterling Bonds.

The Act removes the former condition requiring British ownership of these bonds at 3rd September, 1939, to be established additionally to the requirement of British ownership at 7th November, 1951.

The Administrator of German Enemy Property is now authorised to accept claims on this basis in respect of German enemy debts arising out of the bonds listed above ; these claims should be made on Pt. I of Form D.G.E.P.C.

He is also now authorised to accept claims arising out of *unenfaced* bonds of the Germany External Loan, 1924 (Dawes), German Government International 5½ per cent. Loan, 1930 (Young), and City of Saarbruecken 6 per cent. Sterling Loan of 1928 ; these claims should be made on Pt. II of Form D.G.E.P.C. Claims arising out of these bonds will only rank in the distribution if the bonds were in British ownership at 3rd September, 1939, as well as at 7th November, 1951.

Claim forms can be obtained on application from the Administrator of German Enemy Property, Branch X, Lacon House, Theobalds Road, London, W.C.1. Claims must be made to the Administrator by 31st October, 1952.

Wills and Bequests

Mr. E. W. Hammond, solicitor, of Radyr, near Cardiff, left £21,979 (£20,188 net).

Mr. F. Holmes, solicitor, of Worthing, left £56,185 (£55,790 net).

Mr. W. A. Reid, retired solicitor, of Derby, left £31,046 (£30,571 net).

Major C. E. Whitford, solicitor, of St. Columb and Newquay, left £35,257 (£34,695 net).

OBITUARY

Mr. N. S. Brettell

Mr. Norman Scott Brettell, solicitor, of Chertsey, died on 24th July, aged 74. He was admitted in 1906 and was clerk to the Commissioners of Taxes for the Godley division.

Major F. E. Burcher

Major Frederick Edward Burcher, M.B.E., retired solicitor, of Kidderminster, died on 17th July, aged 82. Admitted in 1894, he succeeded his father as magistrates' clerk and was also clerk to Kidderminster Town Council. His work during the first world war included the clerkship of three rural councils, three assessment committees, two boards of guardians and Kidderminster District Military Tribunal, and although he had reached retiring age in 1939 he continued as clerk to the borough and county magistrates until the end of the second world war.

Mr. A. E. Glover

Mr. Alfred Ernest Glover, solicitor, of Park Street, Park Lane, London, W.1, died on 24th July, aged 77. Admitted in 1898, he was in private practice until 1914, when he joined the staff of the Public Trustee, returning to private practice in 1936.

Mr. R. B. Johns

Mr. Richard Braginton Johns, the oldest practising solicitor in Plymouth, died on 22nd July, aged 89. Admitted in 1885, he had been Coroner for Plymouth and was for many years chairman of Plymouth justices. He was a past president of Plymouth Incorporated Law Society and its secretary for twenty years.

SOCIETIES

GRAY'S INN

The Benchers of Gray's Inn gave two afternoon parties in the hall and gardens of the Society on Thursday and Friday, the 24th and 25th of July. The guests were received by the Treasurer (The Hon. Mr. Justice Sellers, M.C.) and Lady Sellers. The band of the King's Regiment (Liverpool) played on both afternoons.

The annual general meeting of the Gloucestershire and Wiltshire Incorporated Law Society was held at the Red Lion Hotel, Salisbury, on 9th July, 1952, Mr. Ian D. Yeaman, of Cheltenham, presiding. The reports of committees and accounts and balance sheet were approved. It was reported that the membership of the Society was now 211. Mr. G. A. Jonas (Salisbury) was appointed President and Mr. D. S. Milward (Dursley) Vice-President for the ensuing year. A grant of 35 guineas was made to the Solicitors' Benevolent Association. Resolutions were passed approving the adoption of the full scale prescribed by the Solicitors' Remuneration Order, 1882, as amended by subsequent orders, as the prevailing scale for conveyancing matters affecting properties within the area of the Society ; and opposing the suggestion put forward in a letter from the Secretary of the Principal Probate Registry that the number of probate registries shall be reduced.

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